

### **REMARKS**

Claims 1-9 are now pending in the application. In light of the documentary evidence and arguments submitted herein, the Examiner is respectfully requested to reconsider and withdraw the rejections of Claims 1-9.

### **DECLARATION UNDER 37 C.F.R. § 1.131**

The co-inventors of the present application, Michael W. Murphy, Wenbin Gu, and Lewis J. DiPietro, have each executed a declaration (enclosed) in accordance with 37 C.F.R. §1.131 and §1.68 attesting that the date of conception and the date of reduction to practice of the presently claimed invention occurred prior to June 27, 2003. This declaration is being submitted with the purpose of overcoming the rejections contained in the non-final office action. U.S. Patent No. 7,258,944 to Tsunoda (hereinafter “the ‘944 patent”) has an effective date of June 27, 2003. Applicants submit that this declaration establishes that the inventive activities, specifically conception of the invention and reduction to practice, occurred prior to the earliest effective date (*i.e.*, June 27, 2003) of the cited patent and, therefore, it is not available as prior art to the present application, as will be discussed in more detail below.

### **REJECTIONS UNDER 35 U.S.C. §§ 102 AND 103**

Claims 1-3 and 5-9 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Tsunoda (U.S. Pat. No. 7,258,944). Claim 4 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Tsunoda in view of Bronoel *et al.* (U.S. Pub. No. 2001/0006745). These rejections are respectfully traversed.

As a preliminary matter, Applicants respectfully submit that the '944 patent reference does not qualify as prior art under Section 102(b) since it was not "patented or described in a printed publication in this or a foreign country, more than one year prior to the date of application for patent in the United States." The present application was filed on January 16, 2004. The '944 patent reference was published on June 27, 2003, less than one year prior to January 16, 2004. The '944 patent reference did not issue until August 21, 2007, well after the present application was filed. Therefore, Applicants submit that the '944 patent reference could only qualify as prior art under Section 102(e)(1) as "an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent." However, Applicants submit herewith a declaration under 37 C.F.R. Section 1.131 to establish prior invention of the claimed subject matter and remove the '944 patent reference from the Examiner's consideration.

As noted above, the Section 131 Declaration submitted by Inventors M. Murphy, W. Gu, and L. DiPietro, establishes that the inventive activities related to Claims 1-9 of the present invention occurred prior to June 27, 2003, the earliest effective date of the '944 patent reference. The conception and reduction to practice of the present invention pre-date the effective date of the '944 patent reference, and thus, the '944 patent reference is not available as prior art under §102(b), §102(e) and/or §103(a). As such, Applicants submit that none of Claims 1-9 can be anticipated or rendered obvious over the '944 patent. Applicants respectfully request reconsideration of the claims and withdrawal of the rejections.

## **CONCLUSION**

It is believed that all of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Applicants therefore respectfully request that the Examiner reconsider and withdraw all presently outstanding rejections. It is believed that a full and complete response has been made to the outstanding Office Action and the present application is in condition for allowance. Thus, prompt and favorable consideration of this amendment is respectfully requested. If the Examiner believes that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at (248) 641-1600.

Respectfully submitted,

/David A. McClaughry/

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